

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Retirement Heist: How Companies Plunder and Profit from the Nest Eggs of American Workers, by Ellen E. Schultz (Portfolio/Penguin 2011).

3. In modifying Doc. 128-1 in order to reflect information learned from Ms. Peck during her September 11, 2012 depositions, I failed to remove three entries that are identified on the Camp Hill log as having been were received at Camp Hill prior to 1995.

4. Ms. Peck's September 21, 2012 affidavit does not identify the terms "Oct-97," "?," "6/99-6/04," "BINDERS," "Blank," "Confidential," "FILES," "NONE," "Pat Peck Confidential," "Pen/stock info/closing/layoff," and "TAPES" as a basis for determining that a box could not contain relevant materials. Doc. 130-20 ¶ 11. Defendants included 84 box i.d. slips containing these terms, Doc. 130-24, entitled "Box I.D. Slips Referenced in the Affidavit of Patricia Peck." *Compare* Peck Aff. para 11 with Item Nos. 1-15, 30-32, 35-38, 58-118, 121.

5. After a thorough review of each box i.d. slip produced by Defendants on June 5, 7, and July 26, 2012, I have identified 125 boxes listed on Doc. 128-1 for which Defendants have not produced a corresponding box i.d. slip.

6. Defendants have not produced any Proskauer-created list or index of boxes that is dated prior to January 26, 2010. Defendants have produced the following lists and indices:

(a) Defendants produced a two page document, Bates stamped "FL-OSB 022997-98," titled "CAMP HILL DOCUMENT INDEX . . . 1/26/10." This page has a date stamp of "01/26/2010 4:02 pm." Doc. 128-17, FL-OSB 022997-98 at FL-OSB 022997.

(b) Defendants produced a two page document, Bates stamped "FL-PRIV 000223-24," titled "NOTES: CAMP HILL TRIP 1/26/10." Doc. 128-18.

(c) Defendants produced a seven page document, Bates stamped "FL-PRIV 000225-31," titled "1/28/2010 – Foot Locker Corporate Headquarters on 34th Street in NYC" and "Citi Storage slips reviewed & want pulled." This document identifies 160 boxes. Doc. 130-26, FL-PRIV 000225-32 at FL-PRIV 000225-31.

(d) Defendants produced a five page document, Bates stamped "FL-OSB 022992-96," titled "Citi Storage boxes we want." This document is undated. Doc. 130-26 at FL-

OSB 022992-96. It has 159 of the 160 entries listed on FL-PRIV 000225-31 discussed above and dated “1/28/201.” *Id.* The only entry on FL-PRIV 000225-31 that is not on FL-PRIV 022992-96 is the final entry on FL-PRIV 000231. *Id.*

(e) Defendants produced a one page document, Bates stamped “FL-PRIV 000232,” titled “Boxes pulled & reviewed but returned/rejected.” This document is undated. Doc. 130-26, FL-PRIV 000225-32 at FL-PRIV 000231. It identifies one “CitiStorage Box #,” Box # 271951, that is identified as “Boxes pulled & reviewed but returned/rejected.” *See i.d.* A document obtained via Plaintiff’s subpoena *duces tecum* on CitiStorage shows that Defendants recalled this document from storage on January 27, 2010. *See* Doc. 128-12 at FL-CS0200.

(f) Defendants produced a four page document, Bates stamped “FL-PRIV 000244-47,” titled “Citi Storage boxes we want.” This document is undated. Doc. 128-24 at FL-PRIV 000244-47. This document appears to have been attached to an email sent by Proskauer attorney Kara Lincoln to Foot Locker in-house counsel Dennis Sheehan with a copy to Proskauer attorney Nicole Eichberger and project manager Katherine Quayhagen. Doc. 128-24 at FL-PRIV 000240-43. This email states that the attached list relates to “boxes we want to find (the ones we found by going through the slips yesterday [January 28, 2010].” *Id.* It also indicates that the list attached is the same as the list pasted into the email. *Id.* (“Below, and attached, is the list of boxes we want to find”). *Id.*

(g) Defendants produced a four page document, Bates stamped “FL-OSB 022988-91,” titled “Citi Storage boxes we want.” Doc. 130-36 at FL-OSB 022988-91. This document is undated. This document is identical to FL-PRIV 000244-47, attached to an email dated January 29, 2010, apart from handwritten marginalia and other markings.

(h) Defendants produced a five page document, Bates stamped “FL-PRIV 000248-52.” This document contains the forward of Ms. Lincoln’s email sent on January 29, 2010. Doc. 128-16 at FL-PRIV 000248-52 at 49-52.

(i) Defendants produced a three page document, Bates stamped “FL-OSB 022999-3001,” titled “Foot Locker Headquarters File Room Index . . . 2/9/10 - 2/11/10.” This document is dated “2/9/10-2/11/10.” Doc. 130-41, FL-OSB 022999-3001.

(j) Defendants produced a three page document, Bates stamped “FL-PRIV 000298-300,” containing 2 lists, titled “BOXES TO HOLD AND ISOLATE (NOT UPLOAD); 38 total” and “FILE DRAWERS TO HOLD AND ISOLATE (NOT UPLOAD).” The first list has a date stamp of “02/25/2010 10:23 am.” Doc. 128-19, FL-PRIV 000298-300 at FL-PRIV 000299. The second list has an identical date stamp of “2/25/2010 10:23 am.” *Id.* at FL-PRIV 000230.

(k) Defendants produced a one page document, Bates stamped “FL-OSB 023035” titled “INDEX OF DOCUMENTS CAPTURED IN MILWAUKEE: 6 total” and what appears to be a duplicate at “FL-PRIV 000314.” This document has a date stamp of “03/11/2010 1:21 pm.” Doc. 128-21.

(l) Defendants produced an eight page document, Bates stamped "FL-PRIV 000255-62." The document is a compilation of emails from February 16 and 17, 1995, and contains a list of 18 boxes. Doc.130-13, FL-PRIV 000255-62 at FL-PRIV 000259-60.

7. On September 25, 2012, Defendants produced what appears to be hard-copy documents from the files of Ms. Patricia Peck. Those hard-copy files included an email from Mr. Dennis Sheehan to Ms. Peck with a copy to Ms. Sheilagh Clarke on October 5, 2009 regarding the waived topic. Ex. 39, FL-OSB 023728-31; Defs. 9/26/12 Ltr. to Judge Forrest. Defendants have not produced a copy of this email from the hard-copy or electronic files from Mr. Sheehan, Ms. Clarke, or Ms. Peck.

I, Matthew C. Norgard, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: September 26, 2012

A handwritten signature in black ink, appearing to read "M. C. Norgard", is written over a light blue rectangular background.

Matthew C. Norgard